

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 414/92
Exxxx

198

DATE OF DECISION 2-7-92

P G Naik

Petitioner

Mr. S K Shelgikar

Advocate for the Petitioner(s)

Versus

Union of India ' Ors.

Respondent

Mr. J G Sawant

Advocate for the Respondent(s)

CORAM :

The Hon'ble

Ms. Usha Savara, Member - (A)

The Hon'ble

Mr. J P Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

No.

MGIPRRND-12 CAT/86-3-12-86-15,000

M (A)
M (J)

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY -1

OA NO. 414/92

1. Prabhakar Gajanan Naik
Age 53; Occupation-Service;
R/o. R B 1, 11/2 Modikhana
Solapur AND 14 others ..Applicants

V/s.

1. Union of India, Ministry of
Railway; Railway Board;
Railway Bhavan; New Delhi

2. The General Manager
C.R. Boribunder; Office at
Bombay V.T.

3. Divisional Railway Manager;
C.R. Solapur; DRM Office
Modikhana; Solapur

4. Divisional Railway Personnel
Officer; DRM Office; Modikhana
Solapur ..Respondents

Coram: Hon.Ms. Usha Savara, Member (A)
Hon.Mr. J P Sharma, Member (J)

APPEARANCE:

Mr. S K Shelgikar
Advocate
for the applicants

Mr. J G Sawant
Counsel for the
Respondents

ORAL JUDGMENT:
(PER: J P Sharma, Member (J))

DATED: 2-7-92

The applicants who were earlier engaged as Class IV employees in the Railway are working as Junior Clerks on ad hoc basis at Sholapur under DRM in the Central Railway. They have assailed the notification dated 31.1.1992 and 30th March 1992, subject, the selection for the post of Junior Clerk in the grade of Rs.950-1500 from Group D to Group C and direction to the present applicants who joined for the written test for selection for the post of Junior clerk.

The applicant has claimed the following reliefs in para 5 which are reproduced below:

- A) The notification dated 31.1.92 and order-cum-circular issued by Respondents nos 3 and 4 dated 30.3.92 may kindly be quashed and set aside.
- B) Respondents nos 3 and 4 may kindly be directed not to hold written tests on 18.4.92 and date 19.4.92 as per the said notification and order-cum-circular dated 31.1.1992 and 30.3.92 respectively.
- C) The respondents may kindly be restrained from reverting the applicant from their present post of Junior clerks, by granting mandatory injunction in that regard.
- D) It may kindly be declared that the notification dated 31.1.92 and order-cum-circular dated 30.3.92 as null and void and against the principles of natural justice and law.
- E) The respondent no.1 may kindly be directed to decide the matters in respect of confirmation of ad hoc promotees within three months or as early as possible and till then no action of any sort be taken against the applicant.
- F) Any other just, necessary orders in the interest of justice may kindly be passed.

The relevant facts material to the present case are that the applicants are working on ad hoc basis continuously on the post of Junior Clerk for a period of 8 to 10 years (as alleged in the application): In fact it has not been verified. The learned counsel for respondents points out that the period of such working by the applicants varies from two to three years in some cases. The facts also appears to have been quoted in para III at page 7 of the application. The case of the applicant is that there are regular and clear vacancies in Group C when the applicants were promoted from Group D post then they should have been regularised. They also stated in the application that without resorting to RSDAR 1968 the applicant should not be reverted.

The respondents have opposed the admission and a short reply has been filed by the learned counsel for the respondents. It is stated that for the post of Junior Clerk under Railways, the procedure for appointment in the recruitment rules is by direct recruitment, through Railway Recruitment Board for 2/3rd of the vacancies for the remaining 1/3rd of the vacancies there is a departmental promotion examination from Group D employees on the basis of seniority and that is by way of selection. Thus the respondents have stated that the applicants have no case though they have reserved their right to file a detailed reply in case the matter is admitted.

We have heard the learned counsel for the applicant at considerable length. While filing this application a notice was issued on interim

relief also which was prayed in the Original Application that the contemplated examination ordered to be held by the impugned notifications referred to above of January 1992 and March 1992 should not be held. But that prayer did not find favour and an order was passed that the promotions as a result of selection would be subject to the final outcome of the O.A. Since the examinations have already been held the reliefs a, b, d of the application become infructuous and the application cannot be entertained on these reliefs.

Relief 'c' is regarding the matter said to be under consideration about the Group-D employees working on ad hoc basis on Group C posts by the Railway Board. The learned counsel presses that the Railway Board be directed to consider and decide that matter expeditiously.

Regarding relief 'e' it is prayed that the applicants should not be reverted from the present post of junior clerk and a mandatory injunction be granted in that respect.

However, since interim relief has been disallowed this relief too cannot be considered finally on the basis of the law laid down by the full bench in the case of JETHA NAND AND OTHERS V. UNION OF INDIA AND OTHERS (PRINCIPAL BENCH, NEW DELHI), 1989(2) SLJ 657 (CAT) and the review of the same judgment reported in Full Bench Judgments (1989-1991) Vol. II, page 263. Learned counsel for the applicant however, submitted that the respondents be directed to declare the result of the said examination which they have already taken and further that the Railway Board may consider the matter in respect of confirmation of ad hoc promotees.

Both these prayers are by themselves contradictory in nature. If the matter is already under consideration by the Railway Board, this it shall be open to the applicants to approach the Tribunal at a time when the matter is decided not to their liking or against them.

(10)

In view of the above facts the application is disposed of at the admission stage with the direction to the respondents to declare the result of the selection for the post of Group C from Group D employees which was held by virtue of notification of January 1992 and March 1992 within a period of preferably four months from the date of this order.

If the applicants are still aggrieved then they have a right to approach again for redressal of their grievance and the disposal of this application will not a hurdle in their way, subject to the law of limitation.

Signature.

(J P SHARMA) 2.7.92
MEMBER (J)

U. Savarkar '92
(Ms. USHA SAVARKAR)
MEMBER (A)